



Science and human rights make for a good team in Urgenda case on climate change policy: Dutch government must establish a more ambitious emission reduction target for 2020

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By Anemoon Soete - At the end of 2015, a court of first instance in the Hague declared the Dutch policy to mitigate climate change inducing emissions not fit for purpose and lacking a sense of reality. As a result, the court of first instance ordered the government to adjust its policy to achieve a 25% reduction of emissions by 2020. Three years later, the court of appeal confirmed the judgment and established a clear link between a government's duty to care, human rights and the dangers of climate change.



The court of first instance ordered the government to adjust its policy to achieve a 25% reduction of emissions by 2020 compared to 1990 – instead of the previous goal of 14-17%. The court of appeal confirmed the judgement, establishing a clear link between a government's duty to care, human rights and the dangers of climate change.

Since the court of first instance ruled in favor of local NGO Urgenda (a contraction of urgent agenda), world leaders have come together to create the Paris Agreement and receive the latest daunting report of the Intergovernmental Panel on Climate Change (IPCC) on what the world will look like with a 1.5 °C rise in global temperatures. In a world of global acceptance of the dangers of climate change, the facts were in no way debated by either party from the beginning. This case focused on the most suitable path to take as a State in order to not overshoot a 2°C global temperature rise or to not exhaust more than 450 particles per million by 2100, which the IPCC has determined decisively, giving us a “more likely than not” chance to remain within a 2°C world.

The judgment is a gem for climate change litigation everywhere. Firmly grounded in recent science, it has warned a government to always act with care and offer convincing justifications for its policies, and it has not barred climate change policy from the courts as a pure political question.

In line with the demand of article 4 of the Paris Agreement to base policies on the best available science, the court directly relied on the IPCC 4th and 5th Assessment Reports and studies from the European Academies Science Advisory Council (a group of independent scientific advisors in Europe) for the globally accepted science on climate change and the emission reductions the Netherlands should seek to accomplish by 2020. Contemplating these studies, the Court arrived at

the conviction that a minimum of 25-40% reduction for the Dutch government is necessary to do its part to remain within a 2°C world and to fulfil its duty of care as a state for its citizens in line with the precautionary principle. Concretely, the court found this duty of care within the positive obligations attached to articles 2 (right to life) and 8 (right to private and family life) of the European Convention on Human Rights – articles from which the NGO directly derives rights according to the court.

Having already reached the conclusion that a 25% reduction is necessary, the court questioned the government's insufficiently justified change in emission reduction aims since 2011. Whereas the government itself called a 30% reduction by 2020 necessary for a "credible" reduction trajectory up to 2011, it nevertheless downgraded this target to 20% later on. By devoting attention to the lack of a convincing justification to downgrade the government's emission reduction goal for 2020 the closer we get to 2020, the court's remark may move governments to abstain from setting ambitious goals in the first place.

Finally, the court casts aside what is often a major stumbling block for climate litigation: the political question doctrine or the need to separate political, judicial and legislative powers. The court firmly explains that the breach of human rights warrants its intervention in the matter. Furthermore, the court explains that it in no way touches upon the measures – be they legislative or otherwise - the government is to take in order to achieve the 25% emission reduction and thus ensure a satisfactory effort to protect the right to life and private and family life.

In conclusion, it is fair to say that this judgment may lead the way to further use of human rights to explain a State's duty to care for the future of its citizens, which now at least in the context of the ECHR unmistakably means reasonably trying to shield them from climate change harm in light of current science.



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